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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

BRENT WILLIAMS

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

No. 40926

Bonneville Co. Case No.
CV-2013-835

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE

HONORABLE JOEL E. TINGEY
District Judge

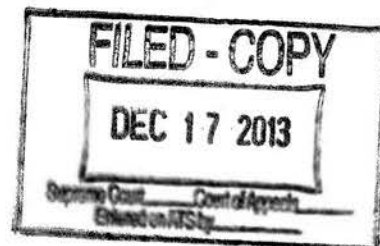
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STATEMENT OF THE CASE

Nature of the Case

Brent Williams appeals, *pro se*, from the district court's order summarily dismissing his petition for post-conviction relief.

Statement of Facts and Course of Proceedings

Williams pled guilty pursuant to plea agreements in two separate cases. (R., pp.7, 20.) The court sentenced Williams on January 10, 2011. (R., p.7.) Williams did not appeal from his convictions or sentences. (R., p.8.)

On February 8, 2013, Williams filed a *pro se* petition for post-conviction relief, and an affidavit in support thereof, alleging various constitutional violations as well as an apparent ineffective assistance of counsel claim for failure of his attorney to advise Williams of his right to a grand jury. (R., pp.7-13.)

The district court filed a notice of intent to dismiss Williams' claims, noting the petition was not timely filed. (R., pp.20-25.) The court also noted Williams had failed to identify any claim that could not have been raised on direct appeal. (Id.) The state filed a motion to dismiss Williams' petition asserting the petition was time barred. (R., pp.26-27.) Williams filed an objection to the court's notice of intent to dismiss but did not address the timeliness of the filing of his petition for post-conviction relief. (R., pp.28-34.) The court thereafter issued an order of dismissal for Williams' failure to file his petition for post-conviction relief within the one-year statute of limitations. (R., p.44.)

Williams timely appealed from the district court's order of summary dismissal. (R., pp.50-53.)

ISSUE

Williams' Appellant's brief does not contain a statement of the issue(s) on appeal. The state phrases the issue as:

Has Williams failed to carry his appellate burden of showing error in the summary dismissal of his post-conviction petition?

ARGUMENT

Williams Has Failed To Carry His Appellate Burden Of Showing Error In The Summary Dismissal Of His Post-Conviction Petition

A. Introduction

The district court summarily dismissed Williams post-conviction petition, concluding that Williams had failed to file his petition within the one-year statute of limitations. (R., p.44.) On appeal, Williams appears to challenge the summary dismissal of his petition, but he has failed to identify any specific error by the district court and has otherwise failed to present any cogent argument or legal authority to support his appellate claims.

B. Williams Has Waived Appellate Consideration Of His Challenge To The District Court's Order Of Summary Dismissal

It is well settled that a party waives an issue on appeal if either authority or argument is lacking. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). It is also well settled that the appellate court will not review actions of the district court for which no error has been assigned and will not otherwise search the record for errors. State v. Hoisington, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983).

Williams contends on appeal that he "recently discovered" he was "denied due process" because he was not indicted by a grand jury. (Appellant's brief, p.2.) He does not claim, however, that the fact he was not indicted by a grand jury was unknown to him, only that he has recently discovered this (erroneous) legal theory. He has failed to present any argument or authority as to why his "discovery" of a new legal theory tolls the statute of limitations. Williams has

therefore not offered any argument, cogent or otherwise, to challenge the district court's rulings. (See generally Appellant's brief.)

Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition "any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of proceedings following an appeal, whichever is later." Absent a showing by the petitioner that the one-year statute of limitation should be tolled, the failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Evensiosky v. State, 136 Idaho 189, 30 P.3d 967 (2001); Sayas v. State, 139 Idaho 957, 959, 88 P.3d 776, 778 (Ct. App. 2003). Williams' claim of ignorance of the law did not toll the time to file his petition for post-conviction relief. See Rhoades v. State, 148 Idaho 247, 253, 220 P.3d 1066, 1072 (2009) (tolling did not apply where facts of claim known to petitioner at time of trial).

Because Williams has failed on appeal to identify any viable claim of error in the district court's actions and has otherwise failed to cite any relevant legal authority or make any cogent argument to support any claim of error, he has waived appellate review of any such claim and has thereby failed to show any error in the summary dismissal of his post-conviction petition.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Williams' petition for post-conviction relief.

DATED this 17th day of December 2013.

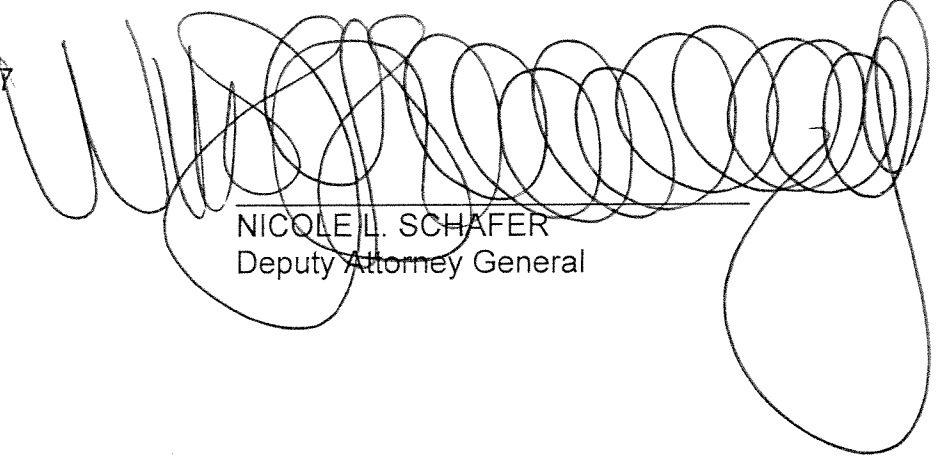


NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of December 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

BRENT WILLIMAS, IDOC #27206
ICC
P.O. BOX 70010
BOISE, ID 83707



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm